



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1995

Ms. Emily E. Helm
Director of Legal Services
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR95-702

Dear Ms. Helm:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID#s 32553 and 33448.

The Texas Youth Commission (the "commission") received, from a former employee, an open records request for a copy of his personnel file and a copy of all grievances filed by him and against him during his employment with the commission. The requestor additionally seeks information about other job postings and positions. You inform us that you have released a copy of the requestor's own personnel file to him. You contend that the other information at issue is excepted from required public disclosure pursuant to section 552.103. You have submitted for our review the records at issue.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To show that section 552.103(a) is applicable, the commission must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You have submitted to this office a copy of a petition showing that the requestor has sued the commission for, among other things, wrongful discharge, defamation, and intentional infliction of emotional distress. Our review of the documents at issue shows they are related to the litigation. We thus conclude that you have met both prongs of section 552.103(a).

It appears that, regarding some of the information you seek to withhold, the requestor has seen the information or had access to it. We note that if the opposing party in the litigation has seen or had access to any of the information in these records, you must release that information to the requestor as there exists no justification for now withholding such information pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/RHS/rho

¹We note that there may exist information in the responsive documents that must be withheld pursuant to various statutory confidentiality provisions if such information is sought by third parties. Additionally, there may exist confidential information in the responsive documents that must be withheld even after discovery and after the litigation is completed.

Ref: ID# 32553
ID#33448

Enclosures: Submitted documents

cc: Mr. Eric Flores
1509 B Charles
Mission, Texas 78572
(w/o enclosures)